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IN THE
COURT OF APPEALS OF INDIANA

DAION CALHOUN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0609-CR-757
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49F09-0604-FD-61299

June 21, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Daion Calhoun ("Calhoun") pleaded guilty in Marion Superior Court to Class D felony auto theft and was ordered to serve 910 days executed. Calhoun appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Concluding that his 910-day sentence is not inappropriate, we affirm.

Facts and Procedural History

On April 4, 2006, Calhoun was charged with Class D felony auto theft. On July 18, 2006, Calhoun entered into a plea agreement with the State. The plea agreement provided that sentencing was left open to the court with a 910-day cap on the executed portion of the sentence. In exchange for Calhoun's guilty plea, the State agreed not to file an habitual offender charge and agreed to dismiss a misdemeanor charge of resisting law enforcement that was pending under a separate cause number.

Calhoun's sentencing hearing was held on August 8, 2006. The court found two mitigating circumstances: his guilty plea and that his family depended on him for support. The court found Calhoun's "extensive criminal history dating back to 1993" and that he was on probation when he committed this offense as aggravating circumstances. Tr. p. 35. The court then ordered Calhoun to serve 910 days executed and pay $1000 in restitution to the victim. Calhoun now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Sentencing determinations are within the discretion of the trial court. Ruiz v. State, 818 N.E.2d 927, 928 (Ind. 2004). "When enhancing a sentence, a trial court must:

(1) identify significant aggravating and mitigating circumstances; (2) state the specific reasons why each circumstance is aggravating or mitigating; and (3) evaluate and balance the mitigating against the aggravating circumstances to determine if the mitigating offset the aggravating circumstances." Vazquez v. State, 839 N.E.2d 1229, 1232 (Ind. Ct. App. 2005), trans. denied. "Generally, the weight assigned to a mitigator is at the trial judge's discretion, and the judge is under no obligation to assign the same weight to a mitigating circumstance as the defendant." Covington v. State, 842 N.E.2d 345, 348 (Ind. 2006).

The trial court considered Calhoun's guilty plea as a mitigating circumstance, yet he asserts that the trial court failed to assign adequate mitigating weight to it. In exchange for his guilty plea, the State agreed not to file an habitual offender charge and agreed to dismiss a misdemeanor charge of resisting law enforcement that was pending under a separate cause number. Calhoun received a substantial benefit for pleading guilty, and we cannot conclude that the trial court abused its discretion in failing to assign significant mitigating weight to his guilty plea. See Francis v. State, 817 N.E.2d 235, 238 n.4 (Ind. 2004).

Next, Calhoun claims that the trial court "failed to properly balance the aggravating and mitigating circumstances before imposing an enhanced sentence." Br. of Appellant at 4. Although the trial court did not specifically state that the aggravating circumstances outweighed the mitigating circumstances, it is clear from the court's sentencing statement that the court evaluated and weighed these circumstances before imposing its sentence. The trial court discussed Calhoun's prior criminal history and stated that after its review of the presentence investigation report, the court would have

imposed the maximum three-year sentence if not for the 910-day cap provided for in the plea agreement. Tr. p. 37. From the court's sentencing statement, we can reasonably infer that the trial court determined that Calhoun's criminal history outweighed the mitigating circumstances.

Finally, Calhoun argues that his 910-day sentence is inappropriate in light of the nature of the offense and the character of the offender. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007), Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied.

Concerning the nature of the offense, we observe that the victim testified that his car was totaled and was "a total loss." Tr. p. 25. We therefore reject Calhoun's argument that his offense was nothing more than "a garden variety auto theft." See Br. of Appellant at 7.

Calhoun also argues that the fact that he was "voluntarily" paying child support for his three children reflects favorably on his character. Child support is a responsibility, not an affirmative decision that is some how meritorious. Moreover, Calhoun fails to acknowledge his extensive criminal history dating back to 1993. He has six prior felony convictions: two convictions for Class D felony possession of cocaine, Class D felony resisting law enforcement, Class D felony theft, Class D felony possession of marijuana, and Class D felony criminal confinement. He also has several misdemeanor convictions and was on probation at the time that he committed this offense.

For all of these reasons, we conclude that Calhoun's 910-day sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.